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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996.)

CC Docket No. 96-98
DA 97-405

Federal Communications Commission
Office of Secretary

AT&T CORP. REPLY COMMENTS ON PENNSYLVANIA PUBLIC UTILITY
COMMISSION'S PETITION FOR EXPEDITED WAIVER OF TEN-DIGIT
DIALING REQUIREMENT FOR 412 NPA OVERLAY

Pursuant to Section 1.3 of the Commission's Rules, and the Public Notice released February 25, 1997, AT&T Corp. ("AT&T") hereby replies to the comments of other parties on the Pennsylvania Public Utility Commission's ("PUC") petition for a waiver of the requirement that it mandate 10-digit dialing for local calls as an element of its overlay relief plan for the 412 NPA.¹ See 47 C.F.R. § 52.19.

None of the comments that support the instant petition offer any arguments beyond those that the Commission thoroughly considered and properly rejected when it required 10-digit dialing for overlay NPA relief plans in its Second Report and Order in

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Petition of the Pennsylvania Public Utilities Commission For Expedited Waiver Of The 10-Digit Dialing Requirement Of 47 C.F.R. § 52.19 For 412 NPA Overlay Area Code Relief, in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, February 14, 1997, at 6 ("PUC Petition for Waiver"). A list of parties submitting comments and the abbreviations used to identify them are set forth in an appendix to these reply comments.

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CC Docket 96-98.² The record neither demonstrates that special circumstances in the 412 NPA warrant a waiver, nor calls into question the Commission's decision to require 10-digit dialing for NPA overlays.

I. The Comments Clearly Demonstrate That The PUC's Arguments Should Be Rejected

The PUC offered two arguments in support of its petition: i) that interim and permanent number portability measures ("INP" and "PNP," respectively) would ameliorate the anticompetitive effects of 7-digit dialing; and ii) that there will be sufficient numbering resources available in the 412 NPA to meet CLECs' requirements. Neither argument withstands scrutiny.

The parties opposing the PUC's number portability argument agree that neither INP nor PNP will be adequate to remedy the anticompetitive effects of permitting 7-digit dialing within the planned 412 overlay.³ As discussed in AT&T's comments, the Commission was fully aware of the portability implementation timetable when it issued its Second Report and Order, and determined at that time that those portability measures did not warrant 7-digit dialing.⁴ In addition, INP will result in impaired quality for ported

² Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, FCC 96-333, released August 8, 1996 ("Second Report and Order").

³ Some parties make unsupported statements in form-letter comments that number portability will be adequate to ensure fair competition in the event the Commission permits 7-digit dialing. However, none of these parties offers any reasons to support their claims on this subject, and so they offer nothing on which the Commission could properly base a waiver decision.

⁴ See AT&T, pp. 2-3; TCG, p. 5; Worldcom, p. 4.

numbers;⁵ and PNP will not be implemented in the 412 NPA for over a year based on the current schedule.⁶ In any event, even if PNP were currently in place, CLECs would be gravely handicapped by their comparatively limited ability to offer new numbers in the existing NPA, while ILECs could rely on “warehoused” numbering resources.⁷

The PUC’s claims that adequate numbering resources are available in the 412 NPA are, as AT&T demonstrated in its comments, both speculative and unsupported.⁸ This fact alone is sufficient grounds to reject the instant petition. However, even accepting the PUC’s projections as correct for the sake of argument, it is patently clear that CLECs will not have access to numbering resources in the 412 NPA on terms that even approach parity with Bell Atlantic, the major incumbent LEC.

The PUC estimates that fewer than one-third of NXXs in the more “desirable”⁹ old NPA will be allocated to CLECs and wireless providers combined. As MCI and TCG state, the allocation of numbering resources to established mobile phone

⁵ See AT&T, pp. 4-5; Sprint, p. 3; TCG, pp. 5-6.

⁶ See AT&T, pp. 4-5; Sprint, p. 3. On the day before comments were due in this proceeding, the Commission issued a news release indicating that it planned to push back its timetable for PNP implementation in some MSAs. While the Pittsburgh MSA was not affected, this order nevertheless demonstrates the current PNP timetable is potentially subject to delays.

⁷ See AT&T, pp. 3-4; MCI, pp. 2-3 (observing that many customers will first try a CLEC’s service by “augmenting their existing service with additional lines from a new entrant.”).

⁸ See AT&T, pp. 5-8.

⁹ Second Report and Order, ¶ 288.

and paging providers is simply irrelevant to the development of alternative wireline local carriers.¹⁰

Further, the PUC's claim that CLECs will have adequate access to NXX codes in the 412 NPA ignores a fundamental fact: As telephone networks are currently configured, local exchange carriers must have one NXX code for each rate center they seek to serve.¹¹ Thus, while Bell Atlantic will have NXX codes for every rate center in its territory in the 412 NPA, CLECs will be able to offer telephone numbers in that area code only for a handful of rate centers. The PUC contends that CLECs and wireless providers have been allocated 202 NXXs in the 412 NPA. Given that there are 184 rate centers in that area code, only one CLEC could even theoretically serve the entire NPA.

II. The Additional Arguments Offered By Commenters Supporting The PUC's Petition Are Also Unpersuasive

Commenters supporting the PUC's petition offer three additional arguments: First, Bell Atlantic NYNEX Mobile ("BANM") contends that if the Commission denies the instant petition, the PUC "might adopt a geographic split of the 412 NPA, despite its finding that an all-services overlay relief plan was in the best interest[] of Pennsylvania residents"¹² BANM's contention boils down to a claim that the instant waiver should be granted because the PUC would prefer that the Commission had adopted a different rule. The PUC's current overlay plan is impermissible, as

¹⁰ See MCI, p. 4 (estimating that 190 of the 202 NXXs the PUC attributes to CLECs and wireless providers are in fact allocated to wireless services); TCG, p. 7. AT&T does not yet have any NXX codes in the 412 NPA.

¹¹ See MCI, pp. 3-4; TCG, pp. 7-8.

¹² BANM, pp. 2-3.

provided by duly promulgated Commission rules, the validity of which no party challenges. If the PUC determines, on re-weighing the evidence before it in light of the Second Report and Order, that a geographic NPA split with 7-digit dialing is preferable to an overlay with 10-digit dialing, then it can implement such a split.

BANM's further argument that the public interest would be harmed in the event of a split because wireless number "takebacks" might be required is likewise a red herring. AT&T opposes wireless takebacks,¹³ and has asked the Commission to clarify that its rules do not permit that practice because it disproportionately burdens wireless customers and carriers, violating the Commission's mandate to administer numbering resources in a fashion that is "technology neutral."¹⁴ However, the hypothetical possibility that the PUC might impose wireless takebacks cannot serve as a basis to grant the instant waiver request. Such a decision would simply trade one anticompetitive impact for another, imposing a critical handicap on CLECs (and granting a tremendous advantage to ILECs) as a means to avoid imposing a burden on wireless technologies. The better course, which AT&T believes the Commission's rules and policies require, would be to permit either an NPA overlay with a 10-digit dialing requirement or a geographic split with no requirement for wireless number takebacks.

¹³ See, e.g., AT&T Petition For Limited Reconsideration And Clarification, filed October 7, 1996, at 12-14, and AT&T Reply To Oppositions To Petition For Limited Reconsideration And Clarification, filed December 2, 1996, at 8-9, in Second Report and Order; AT&T Comments in Massachusetts Department of Public Utilities Petition for Declaratory Ruling Regarding Area Code Relief Plan For Area Codes 508 and 617, NSD File No. 96-15, filed November 6, 1996.

¹⁴ Second Report and Order, ¶ 305.

Second, various commenters opine that requiring 10-digit dialing for local calls will inconvenience telephone customers. As a preliminary matter, customers in many areas currently must dial 10 digits for many of their local calls, and no objective data suggests that this has resulted in cognizable hardships.¹⁵ Indeed, the ATIS Industry Numbering Committee recently issued a report -- with a Bell Atlantic employee serving as moderator -- recommending that 10-digit dialing should become the norm for all calling in the United States.¹⁶

Moreover, if dialing 10-digits does represent a cognizable inconvenience to callers, then that "fact" is perhaps the strongest argument against the requested waiver. As AT&T and others have shown, the distribution of NXX codes in the 412 NPA is such that no CLEC will be able to offer numbers in more than a fraction of rate centers in that area code. Therefore many -- if not most -- CLEC customers will have telephone numbers in the overlay NPA. If 7-digit local dialing were permitted, CLEC customers would be

¹⁵ For example, Bell Atlantic is the ILEC for most of the Washington, D.C. metropolitan area, which encompasses the 202, 703 and 301 area codes. While customers in metro Washington currently can dial 7 digits for calls within their own NPAs, virtually every consumer and business in that area daily places 10-digit local calls without confusion or incident. Similarly, Bell Atlantic's observation that 10-digit dialing will require customers to reprogram their phone's speed dial functions offers an utterly insubstantial basis for the requested waiver. Any NPA relief plan will inevitably require some expense and inconvenience; however, as the Commission is well aware, these costs must be weighed against the benefits that Congress has determined customers will reap from local exchange competition, such as lower prices and better service. In the case of 10-digit dialing, the Commission has already struck that balance, and nothing in the record suggests that it should be altered.

¹⁶ See Alliance for Telecommunications Industry Solutions, Industry Numbering Committee Uniform Dialing Plan, INC-97-0131-017, issued January 31, 1997, at p. 15.

forced to dial 10 digits to reach the vast majority of numbers in their vicinity, while ILEC customers would dial only 7 digits. The PUC cannot have it both ways: If 10-digit dialing is a substantial inconvenience, then 7-digit local dialing would grant a significant competitive advantage to ILECs, in violation of the fundamental procompetitive principles that underlie the 1996 Act. To avoid that alleged inconvenience, the PUC need only implement an NPA split, rather than an overlay. Conversely, if 10-digit dialing does not burden callers, then there is no reason to handicap CLECs at the outset of local exchange competition by segregating them into a thinly-populated NPA while ILECs retain the ability to offer warehoused numbers in the 412 area code. Even prior to passage of the 1996 Act, the Commission recognized in its Ameritech Order that “segregation” of certain carriers into overlay NPAs “would confer significant competitive advantages” on carriers remaining in the old area code, and held that such segregation violates § 202(a).¹⁷

Finally, Bell Atlantic and other ILECs in the 412 area code offer the cynical argument that because their own advertising and customer education programs have led customers to believe that the planned 412 overlay will permit 7-digit local dialing,¹⁸ it is now too late to implement any other overlay plan in the 412 NPA. The PUC’s order calling for an NPA overlay with 7-digit dialing was issued in June 1996. On August 8, 1996, over six months before the instant petition was filed, the Commission issued its Second Report and Order, which required 10-digit dialing for overlays. During the more

¹⁷ Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, IAD File No. 94-102, FCC 95-19, released January 23, 1995, ¶ 27.

¹⁸ See, e.g., AT&T Exhibit 1 (Bell Atlantic advertisement in Pittsburgh Post-Gazette); Bell Atlantic, pp. 1-2; Bentleyville, p. 1.

than seven months that have now elapsed since the Second Report and Order's release, the Commission has given no indication that it intended to exempt the 412 NPA from that order, and no party has sought a stay of the 10-digit dialing requirement.¹⁹ Thus, the ILEC commenters have continued to advocate and plan for 7-digit dialing knowing full well that such a plan was contrary to governing law, and should not now be permitted to claim that their activities constitute grounds for a waiver.²⁰

¹⁹ Although the PUC did seek reconsideration of the Second Report and Order's 10-digit dialing holding, that requirement continued to apply to the 412 overlay plan. See 47 U.S.C. § 405 ("no such application [for reconsideration] shall excuse any person from complying with or obeying any order, decision, report or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission").

²⁰ The ILECs plainly were on notice that 412 NPA relief plan conflicted with the Second Report and Order, as several parties sought reconsideration of the PUC's overlay order, and also brought legal challenges in Pennsylvania state court. See generally TCG, p. 2, n.4.

CONCLUSION

For the reasons stated above and in AT&T's comments, the Commission should deny the Pennsylvania Public Utilities Commission's request that it waive or reconsider the Second Report and Order's requirement of 10-digit dialing for overlay NPA relief plans.

Respectfully submitted

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March 12, 1997

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CERTIFICATE OF SERVICE

I, Terri Yannotta, do hereby certify that on this 12th day of March, 1997, a copy of the foregoing "AT&T Corp. Reply Comments On Pennsylvania Public Utility Commission's Petition For Expedited Waiver Of Ten-Digit Dialing Requirement For 412 NPA Overlay" was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.

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